



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0562]

RIN 1625-AA09

Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to modify the operating schedules that govern the US 90 (Danzinger) Bridge across the Inner Harbor Navigational Canal (IHNC), mile 3.1 and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridge across the IHNC, mile 4.6, both at New Orleans, LA. This proposed change would allow for the safe navigation of vessels while reflecting the low volume of vessel traffic through the bridges thereby increasing efficiency of operations. The proposed change would allow the bridges to operate in a manner that would align the two operating schedules so the bridge owner would be able to use the same bridge crew personnel to operate both bridges with little

to no effect on navigation through the bridges.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2013-0562 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail the Coast Guard; Mr. Jim Wetherington telephone 504-671-2128, e-mails [james.r.wetherington@uscg.mil](mailto:james.r.wetherington@uscg.mil). If you have questions on

viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
GIWW	Gulf Intracoastal Waterway
LDOTD	Louisiana Department of Transportation and Development
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG-2013-0562), indicate the specific section of this document to which

each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0562] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all

comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0562) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

## 4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods

specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Regulatory History and Information

The US 90 (Danzinger) Bridge, mile 3.1, has a current operating schedule under 33 CFR 117.458(b). The bridge shall open on signal; except that from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge has a current operating schedule under 33 CFR 117.458(c). The bridge will open on signal at all times but is allowed to remain closed from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. Louisiana Department of Transportation and Development (LDOTD) (representing the New Orleans Levee District which is the bridge owner) has requested to change the notice required for opening the US 90 (Danzinger) Bridge to two hours notice 24 hours a day; except that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. LDOTD would also like to change the required opening for the Senator Ted Hickey bridge to on signal from 8 a.m. through

8 p.m., open on signal if two hours notice is given from 8 p.m. through 8 a.m. and that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday.

LDOTD initiated this request without prior consultation of waterway users, but did consult with the Coast Guard Eighth District Coastal Region Bridge Branch (dpb) in New Orleans for guidance on how to comply with the requirements of 33 CFR part 117.8. There were no previous regulatory publications or public notices announcing this proposed rule. However, the Coast Guard decided that a test deviation would run in conjunction with the notice of proposed rulemaking (NPRM) to ensure that there were no major concerns on the part of the waterway users. The test deviation will run for thirty days in the middle of the NPRM comment period; from fifteen days after the NPRM comment period begins until fifteen days before it ends. The docket number for the test deviation is also USCG-2013-0562. Comments are encouraged.

#### C. Basis and Purpose

LDOTD, on behalf of the Orleans Levee District, has requested to modify the operating regulations of the U.S. 90 (Danziger) and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridges on the Inner Harbor Navigational

Canal (IHNC) past the Gulf Intracoastal Waterway (GIWW). The proposed change would allow LDOTD to operate these two bridges with the same personnel, thereby increasing the overall efficiency of operations on these bridges and ultimately reducing overall operational costs while allowing for improved transit through these bridges. This section of the IHNC is not on the GIWW and therefore has far fewer opening requests than the GIWW bridges do. The Danzinger Bridge averaged nine openings a month, for vessel traffic, in the last year. The Senator Ted Hickey Bridge averaged 32 openings per month, for vessel traffic, in the last year. This regulatory change would allow for a minimal amount of personnel to work this section of the IHNC while still enabling efficient marine commerce in the area. These proposed changes would also align the two bridges' operating regulations to simplify the planning and use of these bridges by the waterway users.

The US 90 (Danzinger) Bridge across the IHNC, mile 3.1, at New Orleans, Orleans Parish, Louisiana is a vertical lift bridge with a vertical clearance of 50 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-navigation position and 120 feet MHW, elevation 5.0 MSL, in the open-to-navigation position. The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook)

Bridge across the IHNC, mile 4.6, at New Orleans, Orleans Parish, Louisiana is a bascule bridge with a vertical clearance of 46 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-navigation position and unlimited in the open-to-navigation position.

#### D. Discussion of Proposed Rule

The bridge owner would like to modify the existing regulation under 33 CFR 117.458(b) and (c). The proposed change to 33 CFR 117.458(b) would allow the bridge to open if two hours notice is given 24 hours a day; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. The proposed change to 33 CFR 117.458(c) would allow the bridge to open on signal from 8 a.m. to 8 p.m. and from 8 p.m. to 8 a.m. if two hours notice is given; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. These regulatory changes would allow LDOTD to improve the systematic efficiency of bridge operations for vessels using the portions of the IHNC that are not associated with the GIWW. The proposed changes would do this by allowing the bridge operations to be accomplished with the same personnel and allowing the regulations to work with one another thereby allowing for faster response times for openings and more efficient use of the water way

and ultimately more fiscal responsibility on behalf of the owner. There are no alternative routes in this area. Traffic that does not require an opening may pass at any time.

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This proposed rule is not a significant regulatory action. This proposed rule merely modifies a currently existing regulation by adjusting the required time of notification necessary to request a bridge opening. If this proposed change is made permanent, mariners passing

through this area will be aware of the notification requirements and will be able to plan their transits accordingly and provide the proper notice if necessary.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the Danzinger Bridge with less than two hours notice 24 hours a day and the owners or operators of vessels needing to transit the Senator Tom Hickey bridge between 8 p.m. to 8 a.m. on less than a two-hour notice.

This action will not have a significant economic impact on a substantial number of small entities for the

following reasons: This propose rule would create a consistency of operational times as well as allow for the operation of the bridges on this part of the waterway as a system rather than as individual bridges as vessel traffic is relatively low in this general area. By allowing for consistency between the bridge schedules, this proposed rule change could actually allow for a better flow of commerce in this area. Vessels that can safely transit under the bridge may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will

not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive

Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.458 revise paragraphs (b) and (c) to read as follows:

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

\* \* \* \* \*

(b) The US 90 (Danzinger) Bridge, mile 3.1, shall open on signal if at least two hours notice is given; except that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday.

(c) The draw of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal from 8 a.m. through 8 p.m. and from 8 p.m. through 8 a.m. if at least two hours notice is given; except that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday.

Dated: September 23, 2013.

KEVIN S. COOK

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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